APPENDIX

Opinion of Court of Appeals, Second Circuit

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

v.

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants-Appellees.

No. 205, Docket 31595

United States Court of Appeals
Second Circuit.

Argued Nov. 28, 1967.
Decided Dec. 12, 1967.

Appeal from an order of the United States District Court for the Southern District of New York, Marvin E. Frankel, J., denying appellant's motion to convene a three-judge court and granting appellees' motion to dismiss the complaint. Opinion below reported at 269 F. Supp. 880.

Leonard Boudin, New York City (Rabinowitz & Boudin, Victor Rabinowitz, New York City, David Rein, Washington, D. C., and Joan Goldberg, New York City, of counsel), for plaintiff-appellant.

Mortimer Sattler, New York City (Louis J. Lefkowitz, Atty. Gen., of the State of New York, Samuel A. Hirshowitz, First Asst. Atty. Gen., and Joel Lewittes, New York

City, of counsel), for defendant-appellee, Commissioner of Motor Vehicles.

Wyllys S. Newcomb, New York City (Royall, Koegel, Rogers & Wells, John M. O'Hara and Guy C. Quinlan, New York City, of counsel), for defendant-appellee, R. L. Polk & Co.

Before MOORE, SMITH and HAYS, Circuit Judges.

PER CURIAM:

We affirm for substantially the reasons contained in the opinion of Judge Frankel reported at 269 F. Supp. 880 (S. D. N. Y. 1967).

Opinion of United States District Court, Southern District of New York

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants.

No. 67 Civ. 1540.

United States District Court
S. D. New York.
June 22, 1967.

Rabinowitz & Boudin, New York City, for plaintiff; Leonard B. Boudin, Joan Goldberg, New York City, of counsel.

Louis J. Lefkowitz, Atty. Gen. of State of New York, New York City, for defendant, Commission of Motor Vehicles; Mortimer Sattler, Asst. Atty. Gen., of counsel.

Royall, Koegel, Rogers & Wells, New York City, for defendant, R. L. Polk & Co.; Wyllys S. Newcomb, John M. O'Hara, Russell H. Beatie, Jr., New York City, of counsel.

OPINION

FRANKEL, District Judge.

Suing for himself "and all other owners of motor vehicles duly registered" in New York, plaintiff seeks declaratory and injunctive relief based upon the asserted unconstitutionality of N. Y. Vehicle and Traffic Law, Mc-

Kinney's Consol. Laws, c. 71, § 202(3), which provides that the Commissioner of Motor Vehicles

> "may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section [for searching and supplying copies of such records] shall not apply to copies of records furnished under any such contract."

The defendants are the Commissioner of Motor Vehicles and R. L. Polk & Co., which is said to be in the business, *inter alia*, of compiling directories and is alleged to have acquired the registration records as "the highest responsible bidder" under the statute. In addition to seeking a declaration that § 202(3) is unconstitutional under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, along with an injunction "restraining the enforcement and operation" of the statute, plaintiff asks for a judgment of $10,000 against defendant Polk. The court's jurisdiction is said to rest upon 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, and 2284; 42 U. S. C. § 1983; and the foregoing Amendments to the Federal Constitution.

Plaintiff has moved for the convening of a three-judge court under 28 U. S. C. §§ 2281 and 2284.[1] Defendants

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[1]Plaintiff's motion papers also request a preliminary injunction, but it was stated upon argument that this application is not being pressed at this time, pending the ruling on whether a three-judge court is appropriate.

oppose the motion, urging that the asserted constitutional issue is "plainly unsubstantial," Ex parte Poresky, 290 U. S. 30, 32, 54 S. Ct. 3, 78 L. Ed. 152 (1933); cf. Bailey v. Patterson, 369 U. S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962), and that the complaint should, accordingly, be dismissed by a single judge.

The allegations generating these opposing views—taken as true, of course, for present purposes—are: that plaintiff and others like him are compelled to register their motor vehicles with the Commissioner; that defendant Polk, having acquired the registration records, uses the names itself, or sells or leases the lists to others, "for the solicitation through the mails, by telephone and in person, of the registered owners of vehicles, for the purchase of merchandise;" and that the result has been "considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected." Defendants' actions and the provisions of § 202(3), the complaint concludes, "are in violation of the right of privacy of the plaintiff and other registrants, and constitutes [*sic*] deprivation of their liberty and property under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution."[2]

In support of the view that the constitutional issue he raises is sufficiently substantial to warrant the attention

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[2]There is no allegation that plaintiff has demanded exclusion of his name from the list sold by the Commissioner. In response to the court's inquiry, the State Attorney General has taken the position that this is immaterial in any event. With that representation, the question is treated on the premise that such a demand by the plaintiff would have been futile.

of a three-judge court, plaintiff's able counsel presents written argument which reads in its entirety as follows:

> "The substantiality of the constitutional question raised by the complaint in this case is shown by the recent cases dealing with the sanctity of a man's home and the privacies of life. Griswold v. Conn., 381 U. S. 479 [85 S. Ct. 1678, 14 L. Ed. 2d 510]; Mapp v. Ohio, 367 U. S. 643 [81 S. Ct. 1684, 6 L. Ed. 2d 1081]; Breard v. [City of] Alexandria, 341 U. S. 622 [71 S. Ct. 920, 95 L. Ed. 1233]; Public Utilities Comm'n v. Pollack [*sic*], 343 U. S. 451 [72 S. Ct. 813, 96 L. Ed. 1068]; Monroe v. Pape, 365 U. S. 167 [81 S. Ct. 473, 5 L. Ed. 2d 492]; Frank v. [State of] Maryland, 359 U. S. 360 [79 S. Ct. 804, 3 L. Ed. 2d 877]; Skinner v. [State of] Oklahoma, 316 U. S. 535 [62 S. Ct. 1110, 86 L. Ed. 1655]."[3]

To be sure, brevity, a somewhat rare delight in courthouses, is not to be discouraged by equating it with "unsubstantiality." It should also be observed that counsel argued engagingly, and at considerably greater length, in oral support of the view that expanding judicial concern for "the privacies of life" shows enough movement in the law to preclude dismissal of his complaint as frivolous. In the end, however, plaintiff's single sentence of written argument, followed by the citation of seven cases, among which one hurts him and six are inapposite, may fairly be taken as the legal measure of his novel claim.

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[3]Plaintiff's Memorandum of Law, pp. 5-6.

It would be pedantic to linger over the many distinctions between this case and those involving searches and seizures (Mapp v. Ohio, supra; Monroe v. Pape, supra; cf. Frank v. State of Maryland, supra[4]), the sanctity of the marital relationship (Griswold v. Connecticut, supra), the power of States to *limit* solicitation (Breard v. City of Alexandria, supra), and laws for compulsory sterilization (Skinner v. State of Oklahoma, supra). The citation closest to the mark in plaintiff's list is Public Utilities Comm'n v. Pollak, and that is adverse to him. There, the dispute was over governmental approval of radio broadcasts, including commercial messages, to the captive audiences in publicly franchised buses and street cars. The intrusive assault upon the privacy and serenity of unwilling listeners forced to use public conveyances was so jangling to one normally hardy "victim" on the Supreme Court that he found himself unable to rule dispassionately upon the constitutional issue. 343 U. S. at 466-467, 72 S. Ct. at 822-823 (Frankfurter, J.). The Court majority pointedly recorded (p. 465, 72 S. Ct. p. 822) its expression of "no opinion as to the desirability of radio programs in public vehicles." The Court then proceeded, however, to reject the claim that the outraged listeners could invoke the right of privacy or other constitutionally protected interests to shut out the radio broadcasts. Mr. Justice Black dissented in part on grounds that give little or no comfort to the plaintiff in this case. The dissent of Mr. Justice Douglas, centering on the right of privacy, distinguished "the man on the streetcar," forced to hear the broadcasts, from the person at home who is free to turn

[4]Overruled in Camara v. Municipal Court, 387 U. S. 523, 87 S. Ct. 1727, 1741, 18 L. Ed. 2d 930 (1967).

off or away from an offensive program. Id. at 469, 72 S. Ct. 813.

Strictly speaking, that decision is not squarely in point. It contains important implications, however, that lead *a fortiori* to the defeat of this plaintiff's claim. There is no captive quality in the plight of which plaintiff complains. The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect "the privacies of life." The short, though regular, journey from mail box to trash can—for the contents of which the State chooses to pay the freight when it facilitates the distribution of trash—is an acceptable burden, at least so far as the Constitution is concerned. And the bells at the door and on the telephone, though their ring is a more imperious nuisance than the mailman's tidings, accomplish more peripheral assaults than the blare of an inescapable radio.

The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of "public records," available to anyone upon demand. See Vehicle and Traffic Law § 401(2). Indeed, questions more troublesome than plaintiff's might arise if the State adopted a policy of "privacy" or "secrecy" with respect to such information.[5] What the State has done in practical effect is to tap a small source of much-needed revenue by offering a convenient "packaging" service. This may not be the most

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[5]Compare the Act of July 4, 1966, 80 Stat. 250, amending Section 3 of the Administrative Procedure Act to expand the availability of agency records and providing, *inter alia*, that "the burden shall be upon the agency to sustain its action" when it resists disclosure.

inspired kind of government function, although it may be noted that eighteen other States appear to have adopted similar practices.[6] The point of importance, whatever aesthetic or other judgments might be prompted by this activity, is that it reflects a rational and allowable balancing of values by the elected representatives of the people.

In his contrary thesis, plaintiff proposes to stretch the constitutional dimensions of "privacy" far beyond any reasonably foreseeable limits the courts ought to enforce. His claim is in an area where there is no invidious discrimination, no problem of a wrong unreachable at the polls, no suggestion of an affiliction confined to a relatively helpless minority. Cf. Reynolds v. Sims, 377 U. S. 533, 553, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); West

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[6]Cal. Vehicle Code Ann. § 1811 (West Supp. 1966); Conn. Gen. Stat. Rev. § 14-49 (r) (1958); Fla. Stat. § 319.25(5) (a), F. S. A. (1965); Ill. Rev. Stat. ch. 95½, § 3-418 (1959); Ind. Ann. Stat. § 47-2625 (Burns' Replacement 1965); Mich. Comp. Laws Ann. § 257.232 (1967); Minn. Stat. Ann. § 168.33, Subd. 3 (1960); Mont. Rev. Codes Ann. § 53-101(8) (1947); Ohio Rev. Code. Ann. § 4503.26 (Page 1965); Okla. Stat. Ann. tit. 47, § 22.24 (1962); Pa. Stat. Ann. tit. 75, § 417 (1960); S. C. Code Ann. § 46-120 (1962); Gen. & Special Laws of Texas, Chap. 720 § 36 of H. B. 12 (59th Legislature 1965) and Minute Order of Texas Highway Commission pursuant thereto dated February 16, 1966; Utah Code Ann. §§ 41-1-60 (Supp. 1965), 41-1-61 (1953); Vt. Stat. Ann. tit. 23, § 109 (1959); Va. Code Ann. § 46.1-32 (1967); W. Va. Code Ann. § 1721 (140) (1961); Wis. Stat. Ann. § 341.17 (Supp. 1967).

Defendant Polk, in an undisputed compilation of statutes which need not be reproduced here, reports its finding of provisions in every State except Kentucky making public records of vehicle registration information. The substantially uniform state practice is not decisive, but it is another item of some weight against plaintiff's constitutional theory. Cf. McGowan v. State of Maryland, 366 U. S. 420, 497, 81 S. Ct. 1153, 6 L. Ed. 2d (1961) (opinion of Mr. Justice Frankfurter); Green v. Board of Elections, 380 F. 2d 445 (2d Cir. 1967).

Virginia State Board of Education v. Barnette, 319 U. S. 624, 638, 63 S. Ct. 1178, 87 L. Ed 1628 (1943). His alleged injury, shared with what is probably a majority of the electorate, results from a judgment by the State which appears to be well within its "vast leeway in the management of its internal affairs." Sailors v. Board of Education, 387 U. S. 105, 109, 87 S. Ct. 1549, 1553, 18 L. Ed. 2d 650 (1967).

Of course, the fact that a claim is novel does not in itself brand it as unsubstantial. Cf. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 159 71 S. Ct. 624, 95 L. Ed. 817 (Frankfurter, J., concurring). The nonmathematical task of the single judge in a case like this is to decide only whether the contention has some plausible chance of success, arguably sufficient to warrant full-scale consideration in the Supreme Court on an appeal as of right from a three-judge district court. Perhaps "unsubstantiality" need not be so plain when a single judge dismisses as it should probably be when a single judge finds the *defense of constitutionality* frivolous (Bailey v. Patterson, supra) and then enjoins enforcement of the state statute. In the latter situation, the protection of three-judge deliberation is withheld though the case is squarely within the primary purpose of the scheme—"that a single judge ought not to be empowered to invalidate a state statute under a federal claim * * *." Id., 369 U. S. at 33, 82 S. Ct. at 551, 7 L. Ed. 2d 512; and see Green v. Board of Elections, supra, 380 F. 2d at 452. But where, as in this case, a single judge finds the plaintiff's contentions plainly unsubstantial, the normally less major consequence of error is at most to postpone invalidation of the State's law. And

that, in the circumstances of this case, is a bearable possibility.

For the reasons above stated, the motion to convene a three-judge court is denied. The motions to dismiss the complaint are granted. The complaint is dismissed.

So ordered.

Statutes Involved

New York Vehicle and Traffic Law, § 202(3)

3. Fees for copies of records and documents. The fees for copies or records and documents, other than accident reports, shall be as follows: Written or typewritten copies, twenty-five cents per folio, with a minimum of one dollar. Negative photostatic copies, fifty cents per page not exceeding twenty-four square inches in area and one dollar per page in all other cases. The fee for a positive photostatic copy shall be double the fee for a negative photostatic copy. The fee for a negative photostatic copy of an accident report shall be two dollars. The fee for a positive copy of such a report shall be three dollars and fifty cents. If certification of a copy of a record or document is required, there shall be an additional fee of fifty cents.

The commissioner may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract.

New York Vehicle and Traffic Law, § 401(2)

2. Registration record. Upon the receipt of a sufficient application for registration of a motor vehicle or trailer, as provided in this article, the commissioner, or the agent receiving it, shall register such motor vehicle or trailer and maintain a record of the registration of such vehicle under the distinctive number assigned to such motor vehicle or trailer as provided in this section, and the information in

such record may be obtained upon payment of the fees specified in section two hundred two of this chapter.

28 U. S. C. §§ 2281, 2284

§ 2281. Injunction against enforcement of State Statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of

civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.

PRINT ALL ENTRIES (USE BLUE OR BLACK INK)

1. LAST NAME | FIRST | M | DATE OF BIRTH | SEX | IF LICENSED, FILL IN NEW YORK MOTORIST (LICENSE) IDENT. NO.

2. LAST NAME (IF TWO OWNERS) | FIRST | M | DATE OF BIRTH | SEX | IF LICENSED, FILL IN NEW YORK MOTORIST (LICENSE) IDENT. NO.

LEGAL RESIDENCE - STREET AND NUMBER | CITY | POST OFFICE | STATE | ZIP CODE | COUNTY

DOES REGISTRANT HAVE A N. Y. STATE DRIVER'S LICENSE? YES ☐ NO ☐

SOCIAL SECURITY NUMBER OF FIRST OWNER OR FEDERAL EMPLOYER'S IDENT. NUMBER

SOCIAL SECURITY NO. OF SECOND OWNER (IF ANY)

YEAR & MAKE OF VEHICLE | BODY TYPE | ☐ GAS ☐ DIESEL ☐ ELECTRIC | CURRENT INSURANCE COMPANY (NOT AGENT)

VEHICLE IDENTIFICATION NO. | CYL. | WEIGHT | INSURANCE POLICY NO. | COLOR-(SEE REVERSE FOR STANDARD LIST)

SPC. CHG. | ANNUAL FEE | TOTAL PD.

PLATE NO. | EXPIRATION DATE

STICKER NO.

FEE	
CREDIT	
DIFF.	
RE-REG.	
TOTAL	

PART 1

IF YOU ARE THE OWNER(S) AND PAY A SPECIAL CHARGE, HAVE YOU BEEN CONVICTED FOR SPEEDING, RECKLESS OR DANGEROUS DRIVING, OR ANY VIOLATION REQUIRING THE REVOCATION OF YOUR DRIVER'S LICENSE DURING THE PAST 18 MONTHS? ☐ YES ☐ NO

THIS VEHICLE LAST REGISTERED | STATE | YR. | PLATE NO.

EXAMINED BY

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
REGISTRATION

PASSENGER OR SUBURBAN

I CERTIFY THAT: (1) The information given on this application is true. (2) There are no unsatisfied judgments against me as a result of a Motor Vehicle accident. (3) The registration is not currently under suspension or revocation. (4) The vehicle is fully equipped in accordance with the requirements of the Vehicle and Traffic Law. (5) This vehicle will not be used to carry passengers for hire. (6) There are no outstanding orders against me under the Financial Security Act.

X

Sign name in full. If not individual owner, give title. (OVER) MV-639.1 (12/66)

Employer's Name | Street & Number | City | Zip Code | State

RENEWAL—If your preprinted renewal application is for a vehicle that you no longer own wait until the 10th of your expiration month before renewing your registration on this form as you may receive another application.

Renew this registration by mail or in person at your nearest Motor Vehicle Issuing Office.

Submit completed application, your present registration renewal (Part 4) and fee.

NEW VEHICLE—Submit completed application, proof of ownership, certificate of insurance (Form FS-1) and fee with an original registration. To transfer your registration to another vehicle, submit your present registration (Part 3), completed application, proof of new ownership, and fee.

PAYMENT—Make checks or money orders payable to "Commissioner of Motor Vehicles". Do not mail cash or stamps. Third party checks are not acceptable.

INSPECTION—Evidence must be presented that a motor vehicle subject to inspection has passed such inspection.

PART 1

PROOF OF OWNERSHIP—SUBMIT ONE

1. State of New York Registration Renewal, (Part 4), properly filled out and signed by former owner.
2. State of New York Dealers Certificate of Sale (Form MV-50).
3. Certificate of Title issued by a Title State, or a registration from a Non-title State.
4. Notarized Bill of Sale from out-of-state dealer with certification of the dealer by the Motor Vehicle Authority of that State.
5. A Tax Clearance Certificate — Sale of Motor Vehicle (Form ST-170) is required with items 1, 3 and 4 above.

FINANCIAL SECURITY

1. You are required to maintain proof of financial security, usually a certificate of insurance (Form FS-1), with the Commissioner of Motor Vehicles continuously during the period of registration.
2. Original registrations require an FS Form.
3. Reregistrations require a new FS Form.
4. Renewals processed after the expiration date of the registration require a new FS-1 Form.

SIGNATURE

1. Parts 1, 3, and 4 of this application must be signed.
2. Married woman—Must sign her own first name.
3. Partnership or joint ownership—Enter both names on Parts 1, 2, 3, 4. Enter other owners on Form MV-251, obtainable at any Motor Vehicle or County Clerk Office.
4. Business or trade name—Should not be used. Show only name(s) of the owner(s).
5. Corporation—Must be signed by an officer or a person authorized by power of attorney.

LIST OF STANDARD COLORS

These colors may be modified by use of the terms light or dark. In the case of two tone vehicles enter both colors. Enter color of vehicle on face of application.

Black	Gold	Maroon	Purple	White
Blue	Grey	Orange	Red	Yellow
Brown	Green	Pink	Tan	

SOCIAL SECURITY NUMBER

Enter Social Security Number if vehicle is owned by an individual, partnership or a joint ownership.

Enter Federal employer's identification number if vehicle is owned by a corporation.

PASSENGER OR SUBURBAN RENEWAL

EXPIRATION DATE | SPC. CHG. | PLATE NO.

ANN. FEE | TOTAL FEE PAID

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | CYL. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

X

Sign full name. If not individual owner, give title.

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 4

PASSENGER OR SUBURBAN REGISTRATION

EXPIRATION DATE | SPC. CHG. | PLATE NO.

ANN. FEE | TOTAL FEE PAID

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | CYL. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

X

Sign full name. If not individual owner, give title.

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 3

PASSENGER OR SUBURBAN CONTROL

EXPIRATION DATE | PLATE NO.

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

EMPLOYER AND BUSINESS ADDRESS

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 2

New York Motor Vehicle Registration Form (MV-639.1)

New York Motor Vehicle Registration Form (MV-639.1)

CHANGE OF ADDRESS AND TRANSFER

You must notify the Department within 10 days, on Form MV-232, which may be obtained at any Motor Vehicle Office. Enter new address below:

_____

_____

FOR TRANSFER USE THIS PART

To dispose of this vehicle check disposition and fill in all the information requested below.

Inspection Stamp

DATE OF DISPOSITION _____

☐ Transferred ☐ Destroyed
☐ Vehicle permanently removed from the State
☐ Registered dealer, returned to stock
☐ Stolen; right, title and interest sold

TRANSFERRED TO: _____

OWNER'S STATEMENT: I am the owner of the vehicle described on the reverse side, or a member of the firm or officer of the corporation owning same and have disposed of the vehicle as shown above.

SIGNATURE _____
Seller, sign name in full

PART 4

FOR CREDIT FEE USE THIS PART

Surrender your plates, sticker, and registration certificates (Parts 3 and 4) to a Motor Vehicle Office before you cancel your Liability Insurance to avoid revocation.

Allowable only toward a reregistration. You must be the owner shown on the reverse. To obtain allowance, check disposition of the vhelcle and fill in all the information requested below.

DATE OF DISPOSITION _____

Inspection Stamp

☐ Transferred ☐ Destroyed
☐ Vehicle permanently removed from the State
☐ Registered dealer, returned to stock
☐ Stolen; right, title and interest sold

TRANSFERRED TO: _____

OWNER'S STATEMENT: I am the owner of the vehicle described on the reverse side, or a member of the firm or officer of the corporation owning same and have disposed of the vehicle as shown above.

SIGNATURE _____
Seller, sign name in full

PART 3

MOTOR VEHICLE OFFICES

All County Clerk Offices issue Motor Vehicle registrations except the counties of New York, Queens, Kings, Bronx, Richmond and Albany. In these counties registrations may be obtained at the following Motor Vehicle District Offices:

NEW YORK
141-155 Worth Street
New York, New York 10013

QUEENS
89-01 Sutphin Boulevard
Jamaica, New York 11435

KINGS
333 Schermerhorn Street
Brooklyn, New York 11217

BRONX
2265 E. Tremont Avenue
Bronx, New York 10462

RICHMOND
450 St. Mark's Place
Staten Island, New York 10301

ALBANY
135 Ontario Street
Albany, New York 12206

SPECIAL REGISTRATIONS

Mail Special Registrations to:
Commissioner
NYS Department of Motor Vehicles
135 Ontario Street
Albany, New York 12206

PART 2

Petitioner's Complaint in the District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff,

—against—

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants.

Plaintiff for his complaint alleges:

1. Jurisdiction of the Court arises under 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, 2284; 42 U. S. C. § 1983, and under the Constitution of the United States and, in particular, under the First, Fourth, Fifth, Ninth and Fourteenth Amendments thereto.

2. The plaintiff is a resident of the City, County and State of New York and brings this action on behalf of himself and all other owners of motor vehicles duly registered under New York Vehicle and Traffic Law § 401. The number of owners of registered motor vehicles is so great that it is impracticable to bring them all before this Court; there are questions of law and fact presented herein which are common to the entire class of persons registered under said Vehicle and Traffic Law; the plaintiff's claim is typical of the claims of the class; the plaintiff will fairly and adequately protect the interests of the class.

3. The defendant, Commissioner of Motor Vehicles of the State of New York (herein called the "Commis-

sioner") is in charge of the Motor Vehicle Department pursuant to New York Vehicle and Traffic Law § 200.

4. Section 202(3) of said Vehicle and Traffic Law provides that the Commissioner may

> "in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract."

5. Defendant, R. L. Polk & Co. (herein called "Polk") is a corporation organized under the laws of the State of Delaware, doing business in the State of New York at 551 Fifth Avenue, New York City, and duly licensed to do so. It is engaged in the business of compiling, preparing, editing, publishing directories, reference books and so forth.

6. Plaintiff and those for whom he sues have duly registered their motor vehicles under the said § 401 which requires that "No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article. . . ."

7. Upon information and belief, the defendant Commissioner has sold and delivered the current list of names of registered owners of motor vehicles to defendant Polk pursuant to § 202(3) of the said Vehicle and Traffic Law, and will continue to sell said list to defendant Polk or to

the highest bidder unless ordered to cease and desist from such sales.

8. Upon information and belief, Polk in turn uses the said names as a basis for the solicitation through the mails, by telephone and in person, of the registered owners of vehicles, for the purchase of merchandise; the said solicitation is done either by Polk directly or by those to whom it sells or leases the said names of registered owners.

9. The aforesaid actions of the defendants, and the provisions of § 202(3) are in violation of the right of privacy of the plaintiff and other registrants, and constitutes deprivation of their liberty and property under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

10. The said operation of the statute and the defendants' conduct pursuant thereto has resulted in considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected.

11. The plaintiff has been individually damaged in an amount exceeding $10,000 as a result of such action by the defendants under the said statute.

12. Plaintiff has suffered and continues to suffer immediate serious and irreparable injury by reason of the operation and enforcement of said statute.

13. Plaintiff has no adequate remedy at law.

Petitioner's Complaint in the District Court

WHEREFORE, plaintiff prays for the following relief:

A. That pursuant to 28 U. S. C. §§ 2281 and 2284, a three-judge federal district court be immediately convened to hear and determine plaintiff's application for preliminary and permanent injunction.

B. That a declaratory judgment issue declaring that § 202(3) of the New York Vehicle and Traffic Law is null and void as violative of the Constitution of the United States.

C. That a permanent injunction issue restraining the enforcement and operation of § 202(3) as unconstitutional and restraining the defendant Commissioner from selling the list of names of owners of motor vehicles under § 202(3), and restraining the defendant Polk and those in privity with it from selling or otherwise using said list of registered owners.

D. That judgment against defendant Polk be entered in the sum of $10,000, together with the costs of this action.

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Opinion of Superior Court of Hartford County, Connecticut in *Chapin v. Tynan*

No. 150994

NORMAN S. CHAPIN

vs.

JOHN J. TYNAN, COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF CONNECTICUT, ET AL.

April 25, 1968

MEMORANDUM OF DECISION

The plaintiff is duly licensed by the State of Connecticut to operate a motor vehicle owned by him and registered under the laws of the State of Connecticut. Prior to the issuance of a temporary injunction obtained by the plaintiff, reference to which will be made hereafter, the State of Connecticut, acting through the defendant Commissioner of Motor Vehicles, (hereinafter referred to as "the commissioner") furnished the defendant R. L. Polk and Company (hereinafter referred to as "the company") microfilm copies of all new registrations and transfers of registrations on a twice-weekly cycle and back-up magnetic tape records of the entire alphabetic registration file on an annual basis. The evidence clearly discloses that as a result of the registration data furnished the company by the commissioner, the plaintiff has received two pieces of mail in which he had no interest from third parties to whom the company furnished the information and a third communication, likewise unwanted by the plaintiff, from a

source that directly or indirectly received the plaintiff's name and address from the commissioner's disclosure of the registration or license records pertaining to the name and address of the plaintiff. The plaintiff is required to list his name and address with the commissioner or face a suspension of his license and revocation of his registration.

The State of Connecticut has received $15,000 annually for the furnishing of the information under a contractual agreement entered into by the commissioner and the company.

While this action is being maintained by the plaintiff in an individual capacity (in contrast to representative), the commissioner has deemed it prudent to cease furnishing the company registration information completely although the temporary injunction restrained further disclosure of information relating to the plaintiff only. The plaintiff by these proceedings seeks to make that injunction permanent. Succinctly stated, the plaintiff's claim is that the sale of this information is unauthorized under the statutes of this state and that if authority is construed to be granted by virtue of #14-49(r) of the General Statutes, that statute permits the invasion of his privacy and thus is unconstitutional, the basis of this averment being that he will suffer irreparable injury by being subjected to the receipt of unwanted mail and commercial solicitation.

At the threshold, our inquiry must be directed to the question as to whether the evidence supports a basis for the claim that there has been a violation of the plaintiff's right of privacy, that is whether he has standing to attack the constitutionality of the statute. *Coyle* v. *Housing Authority,* 151 *Conn.* 421, 424; *Hardware Mutual Casualty*

Co. v. *Premo,* 153 Conn. 465, 470, 471. One who suffers no injury by the operation of a statute will not be heard to claim that it is unconstitutional. *Carroll* v. *Socony-Vacuum Oil Co.,* 136 Conn. 49, 60.

The plaintiff's claim that he is threatened with an invasion of his right of privacy is of course the crux of his complaint that he will suffer irreparable injury, which injury must be proven to entitle him to injunctive relief. *Riley* v. *Liquor Control Commission,* 153 Conn. 242, 247. With reference to the latter, since the injunctive process is a harsh remedy, to justify its issuance, the injury must be substantial, not merely technical and there must be not only a violation of the plaintiff's rights, but a violation that will be attended with serious damage unless the injunction is issued. *Crouchley* v. *Pembianchi,* 152 Conn. 224, 227.

That this state recognizes the violation of privacy as affording a valid cause of action is now accepted. *Horn* v. *Rennison,* 21 Conn. Sup. 400; *Steding* v. *Battistoni,* 3 Conn. Cir. 76; *Carey* v. *Statewide Finance Co.,* 3 Conn. Cir. 716. This mode of redress requires a demonstration that a person unreasonably and seriously interfered with another's interest in not having his affairs known to others. The defendant's conduct must be offensive to persons of ordinary sensibilities, and in the determination of this, the habits of the plaintiff with reference to publicity are considered. Restatement of the Law, Torts, #867.

The right to privacy has been defined as "the right to be let alone". 4 Harvard Law Review 193, Warren and Brandeis. Relative considerations are necessarily involved in each case in any determination as to the impact of the alleged offensive conduct. While the legal standard—that

the conduct be offensive to persons of ordinary sensibilities—remains constant, yet whether there has been a bruising of those sensibilities remains a question of fact, i.e. whether the conduct is offensive. Activity which a Greta Garbo personality (with a passion for seclusion and an inordinate desire to remain incognita) would resent as an intrusion upon her privacy, might be welcomed by an extraverted, gregarious, and ambitious young starlet.

Prior to the institution of the instant action, during its pendency, and practically up to the time of trial, the plaintiff has encouraged and promoted publicity via interviews for television and newspapers. His posed picture has been published in newspapers. He had made trips to newspaper offices and a New York television station office with his family to publicize his cause. His modus operandi is completely incongruous with his position that his right of privacy —the right to be let alone—has been intruded upon. His readiness to bask in the sun of publicity generated by his cause celebre does not demonstrate that the receipt of three pieces of mail advertising men's clothing, seat covers, and leather goods, has been offensive to him, especially when one considers that as a result of the publicity promulgated by him, he has been receiving more mail from other sources. The information sold is not intimate. Nor is the mail received offensive. The requisite proof to support a claim of invasion of privacy is lacking. It might be noted, parenthetically, that he has willingly given his name and address to other sources available to the direct mailing industry.

The cardinal requirement in an action for an injunction is proof of an irreparable injury. Even assuming that the plaintiff was offended by the receipt of this mail, "[t]here are some . . . inconveniences and annoyances which mem-

bers of society in the nature of things must absorb without the right of redress". *Davis* v. *General Finance & Thrift Corp.*, 80 Ga. App. 708, 57 S. E. 2d 225, 227. The pace at which our commercial world runs does not permit its inhabitants the seminarian solitude and serenity of the cloistered cleric without interference from the bustle of mundane life. This annoyance cannot be termed an injury.

"The mailbox, however noxious its advertising contents seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life' ". *Lamont* v. *Commissioner of Motor Vehicles,* 269 F. Supp. 880, 883 (1967). These annoyances are not irreparable injuries within the contemplation of the law that can justify the issuance of an injunction—a harsh remedy—against the defendants.

While this disposes of the complaint of the plaintiff concluding further consideration of his case, since the commissioner has seen fit to stop completely his "packaging" service to the company with reference to all registrants, and since this is a matter of public interest, the court deems it necessary to pass upon the constitutional questions posed and the claim that the commissioner's selling of the information is unlawful. *State* v. *Sul,* 146 Conn. 78, 83, 84.

Section 1-19 of the Connecticut General Statutes—the so-called "Right-to-Know-Statute"—authorized the copying of all records kept by an administrative agency and clearly encompassed the records kept by the motor vehicle commissioner with reference to licenses and registrations of motor vehicles. This statute was repealed via P. A. No. 723 of the 1967 General Assembly. The supplanting statute repeated the rights of access to public records, but the

amendment excluded certain data from public revelation to reconcile the need of individuals for privacy in sensitive personal matters. It now excepts certain types of records including commercial or financial information from disclosure.

Section 14-10 expressly accords the public the right to inspect records pertaining to licenses and registrations of motor vehicles. No restriction appears therein. This statute, of long standing, was in effect when Public Act No. 723 was passed, and the legislature did not include automobile registration or license records in the list of records exempt from public viewing or copying. Obviously the legislature in enacting Public Act No. 723 did so with existing relevant statutes in mind and thus evinced a desire not to exempt license or motor vehicle registration data. The General Assembly is presumed to know all existing statutes and is presumed to know the effect which its non-action will have upon any one of them. *Hartley* v. *Vitielle,* 113 Conn. 74, 82. By not including license or motor vehicle registration data from public perusal, the legislature must have intended that the commissioner should continue to allow inspection of that information. And that right to inspect the records carries with it the right to copy them. *Direct Mail Service, Inc.* v. *Registrar of Motor Vehicles,* 296 Mass. 353, 5 N. E. 2d 545, 547.

Neither is the plaintiff's argument that the registration data is commercial or financial information and thus specifically excluded by Public Act No. 723 meritorious. While the information ultimately finds itself in the commercial and financial world, through correlation with other statistics, it is not commercial or financial information when received by the commissioner.

Section 14-49 (r) authorizes the commissioner to determine the charge for "a complete list of the owners of motor vehicles each year, and for current supplementary lists of new registrations." It is this section under which the commission effected the contract with the company. The plaintiff contends that the authority allows a compilation of the list of *owners* (emphasis added) only and not other information, such as addresses of owners.

An act should be construed in a way that avoids absurdity. *Blanos* v. *Kuleava,* 107 Conn. 476, 482. Furthermore, a statute conferring a privilege or a right carries with it by implication everything necessary to insure the realization of that privilege or to establish that right in order to make it effectual and complete. *Beroner* v. *State,* 144 Conn. 282, 288. It would be utterly useless and meaningless for the commissioner to sell and the company to buy just a list of names without the address and data the company obviously needed to effect its purpose in promoting its business.

The commissioner's sale of the registration information was lawful and under statutory authority.

The plaintiff maintains that even if this authority exists by statute, # 14-49 (r) is unconstitutional and permits an invasion of his privacy. He cites several provisions under the Constitution of Connecticut and the United States. His brief emphasizes the ninth (rights retained by people) and the fourteenth amendments—the so-called due process of law amendment. The plaintiff's position, even if sustained, would not give him the protection he seeks since all this statute purports to effect is the providing of authority to the commissioner to arrange a charge for providing the names "in bulk", as it were, rather than on an individual

basis. That is to say, even without this statute, under #14-10 the commissioner could disclose the information but not on a "packaging" basis. However, in the interests of justice the court will consider the proffered constitutional objections with relation to both statutes.

In considering the attack on the constitutionality of statutes, courts can assume that they were passed by the legislature not only to serve the best interest of the public of this state but also to operate in a manner not violative of individual rights. If there are any reasonable grounds sustaining the statute's validity, or if there is any proper public purpose served by the statute, the courts may presume that the legislature intended them. *State* v. *Doe,* 149 Conn. 216, 231 (1962). "The legislative department is the judge, within reasonable limits, to determine what public commerce and public welfare require, and the wisdom of its legislature is not the concern of the courts. It is our duty to sustain an act unless its invalidity is in our judgment beyond a reasonable doubt." *State* v. *Bassett,* 100 Conn. 430, 432, 433. The record is replete with evidence affording sufficient grounds for the existence of the laws under which the commissioner acted, particularly with reference to his contracting with the company. First of course is the tapping of a source of revenue, although it may not be the most inspired type of governmental function. *Lamont* v. *Commissioner of Motor Vehicles,* supra, 883. Other statistical data compiled by this "in bulk" furnishing of names has, as disclosed by the company's experience, potential or actual value in instant recall of defective vehicles potentially dangerous to the public, determination of parts inventory, publication of city directories, assistance to governmental

agencies and law enforcement officials. Indeed the plaintiff concedes a segment of the public welcomes the mail which he resents. Furthermore, this "packaging" method is more convenient for the commissioner rather than the manual preparation of the records.

It may well be that the actual benefit to the public is outweighed by the inconvenience and mischief caused by disclosure of names and addresses of registrants and that the receipt of tons of unwanted mail from direct mailing institutions "has aroused resentment among many householders who find their mailboxes and patience loaded by these commercials," as recently editorialized in the New Haven Evening Register. However, courts cannot concern themselves with the wisdom of statutory provisions, and such complaints of the "there-ought-to-be-a-law" variety are best addressed to the legislature rather than to the courts. It is noted that Congress recently passed legislation relative to prohibition of pandering advertisements in the mails. Public Law, 90-206, 90th Congress, December 16, 1967.

However, no such hue and cry seems to have pervaded the halls of our legislature. A reading of the minutes of a legislative committee hearing on April 1, 1965 relative to Bill No. 3604 entitled "An Act Concerning the Prohibition of the State or State Agencies from Selling Lists of Names" reveals complete opposition by representatives of various interests determined to perpetuate the present system. Nobody appeared in support of the measure, certainly affording some justification for the legislature's retaining #14-49 (r) on the statute books. When the legislature has enacted a statute, the terms of which are clear and precise,

it is the duty of the courts to apply it without limitation, extension, or exception. *Washburn* v. *LaMay,* 116 Conn. 576, 578. The statutes, ##14-10 and 14-49 (r) meet the test of constitutionality.

To summarize: (a) The plaintiff has failed to sustain the burden of proof that his right of privacy has been invaded, (b) the plaintiff has failed to demonstrate an irreparable injury, (c) the commissioner's action in selling registration information to the defendant company is sanctioned under the law, and (d) the statutes in question (## 14-10 and 14-49 (r)) are constitutionally unassailable.

Judgment may enter for the defendants. No costs will be taxed.

GRILLO, *J.*